

APR 9 1979

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1978

No.

78-1537

NED GEORGE FORMAN,

Petitioner,

VS.

CHARLES L. WOLFF, JR., *et al.*,

Respondents.

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**
—

*To the Honorable Chief Justice and Associate Justices of
the Supreme Court of the United States of America:*

Petitioner, Ned George Forman, respectfully prays
that a Writ of Certiorari issue to review the judgment and
opinion of the United States Court of Appeals for the
Ninth Circuit entered in this proceeding on November 20,
1978.

OPINION BELOW

The opinion of the Court of Appeals for the Ninth Circuit, not yet reported, appears as an appendix hereto. No opinion was rendered by the District Court for the District of Nevada.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on November 20, 1978. A timely petition for rehearing *en banc* was denied on January 8, 1979, and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Does a state court's reliance upon a new rule of law to reverse an order granting habeas corpus relief violate the due process clause because of its *ex post facto* effect?

STATUTORY PROVISIONS INVOLVED

Nevada Revised Statutes:

“§ 453.321: Offenses and penalties: Prohibited Acts; Penalties.

“1. Except as authorized by the provisions of NRS 453.011 to 453.551, inclusive, it is unlawful for any person to sell, exchange, barter, supply

or give away a controlled or counterfeit substance.

“2. Any person 21 years of age or older who sells, exchanges, barter, supplies or gives away a controlled or counterfeit substance in violation of subsection 1 classified in:

“(a) Schedule I or II, to a person who is:

“(1) Twenty-one years of age or older shall be punished by imprisonment in the state prison for not less than 1 year nor more than 20 years and may be further punished by a fine of not more than \$5,000. . . .

“(2) Under 21 years of age shall be punished by imprisonment in the state prison for life with possibility of parole and may be further punished by a fine of not more than \$5,000. . . .

“3. Any person who is under 21 years of age and is convicted:

“(a) Of an offense otherwise punishable under subsection 2 shall be punished by imprisonment in the state prison for not less than 1 year nor more than 20 years, with possibility of probation. . . . ”

STATEMENT OF THE CASE

On April 29, 1974, in the Second Judicial District Court of the State of Nevada, Ned Forman pled guilty to

a sale of cocaine. On December 27, 1974, he was sentenced to a term of 15 years in the Nevada state prison.

On April 29, 1976, in the case of *Hass v. State*, 92 Nev. 256, 548 P.2d 1367 (1976), the Nevada Supreme Court construed the statute under which Forman had been charged. In *Hass*, the Court held that the prosecution was required to allege and to prove the age of the defendant—that the age of the defendant was an element of the offense. The absence of the allegation and proof of the defendant's age, said the Court, was a defect fatal to a conviction.

After *Hass* was decided, a petition for habeas corpus was filed on Forman's behalf in the First Judicial District Court of the State of Nevada. The argument presented in that petition was that the failure of the information to which he pled to allege his age required Forman's release. On October 15, 1976, Forman's petition for habeas corpus was granted and his unconditional release was ordered.

The State of Nevada appealed the order in Forman's case. On December 30, 1976, the Nevada Supreme Court, in the case of *State v. Wright*, 92 Nev. 734, 558 P.2d 1139 (1976), overruled *Hass*. On that same date, the Court reversed the order granting habeas corpus relief to Forman.

As a result of the Nevada Supreme Court decision in his case, the First Judicial District Court ordered Forman remanded to custody. The petition filed in the United States District Court for the District of Nevada which initiated this proceeding challenged the legality of that custody.

REASONS FOR GRANTING THE WRIT

The Reliance Upon *State v. Wright*, Which Overruled *Hass v. State*, As A Basis For The Reversal Of The Order Granting Habeas Corpus Relief To Petitioner Was In Violation Of The Due Process Clause Because Of Its *Ex Post Facto* Effect.

On October 15, 1976, when the First Judicial District Court granted Ned Forman's habeas corpus petition and discharged him from custody, the law of the State of Nevada included the requirement set forth in *Hass v. State*, 92 Nev. 256, 548 P.2d 1367 (1976). *Hass* construed Nevada Revised Statutes § 453.321, the statute pursuant to which Forman was charged, as requiring that the prosecution allege and prove that a defendant was over the age of 21 years at the time of the commission of his or her crime.

State v. Wright, 92 Nev. 734, 558 P.2d 1139 (1976), the decision of the Nevada Supreme Court which overruled *Hass* after Forman's release, should not have been relied upon by the Nevada courts to allow the reversal of the order granting habeas corpus relief to Forman. The application of *Wright* to Forman's case was an *ex post facto* application and was barred by the due process clause.

The due process clause prevents state courts from retroactively applying judicial or administrative decisions which expand the scope of criminal statutes, *Bouie v. City of Columbia*, 378 U.S. 347, 353-54 (1964); which increase the punishment for crimes, *Love v. Fitzharris*, 460 F.2d 382 (9th Cir. 1972), vacated as moot, 409 U.S. 1100 (1973); or which alter rules of criminal procedure to the detriment

of a defendant, *Talavera v. Wainwright*, 468 F.2d 1013 (5th Cir. 1972). Both *Love* and *Talavera* bear upon the issues presented here.

In *Love v. Fitzharris*, a habeas corpus petition was filed by a California prisoner challenging the legality of an administrative decision postponing his minimum eligible parole date. When Love began serving his sentence, he was notified by the Department of Corrections that he would be eligible for parole after serving 3 years and 4 months. Shortly thereafter, the Department reinterpreted the California parole eligibility law and informed Love that his minimum term was 5 years.

The Ninth Circuit affirmed the District Court's order restoring Love's 3-year, 4-month term.

"A new administrative interpretation which subjects the prisoner already sentenced to a more severe punishment has the same effect as a new statute lengthening his present term [*Lindsey v. Washington, supra*] or a new court decision making what was lawful when done a crime [*Bouie v. City of Columbia*, 378 U.S. 347 . . . (1964)]; each 'alters the situation of the accused to his disadvantage . . . ' [*In re Medley*, 134 U.S. 160, 171 . . . (1890)], and each is prohibited by the Constitution."

Love v. Fitzharris, supra, 460 F.2d at 385.

See also *Shepard v. Taylor*, 556 F.2d 648, 654 (2d Cir. 1977).

In *Talavera v. Wainwright*, a habeas corpus petition was filed by a Florida prisoner challenging the retroactive application of a state severance statute which increased the burden on a criminal defendant seeking a severance. On appeal from

his conviction, the Florida Supreme Court had held *Talavera* to the requirements of a new severance statute which had not been in effect at the time of his trial. That statute made it more difficult to obtain a severance than had the prior law.

The Fifth Circuit Court of Appeals held that the action of the Florida Supreme Court had denied *Talavera* due process. The Court said:

"[T]he Constitution prohibits a state from retroactively applying a new or modified law or rule in such a way that a person accused of a criminal offense suffers any significant prejudice in the presentations of his defense."

Talavera v. Wainwright, supra, 468 F.2d at 1015-16.

The Court held that

"A criminal defendant in a state criminal prosecution is denied due process of law when any of his substantive rights are disposed of by the retroactive application of a statute or rule that was not in effect at the time he sought to exercise the right."

Talavera v. Wainwright, supra, 468 F.2d at 1016.

In Ned Forman's case, the Nevada Supreme Court did what the *Love* and *Talavera* decisions held to be impermissible: It disposed of Forman's habeas corpus petition by retroactively applying a rule of law that was not in existence at the time that the First Judicial District Court ordered Forman's release. For a period of time, Nevada law provided for rules of pleading and proof in narcotics

cases that were not met in Forman's case. For a period of time, under Nevada law, Forman's imprisonment was unlawful. During that period, a Nevada court mandated Forman's release. A later court decision changing the state of the law cannot require Forman's reimprisonment.

It does not answer Forman's objections to the legality of the retroactive application of *Wright* to say that *Wright* made *Hass* a "void decision." However short-lived or ill-advised, case law and statutes have lasting effects.

"The courts below have proceeded on the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to such determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration."

Chicot County Drainage District v. Baxter State Bank, 308 U.S. 371, 374 (1940)
(citations omitted); *Dobbett v. Florida*,
..... U.S., 97 S. Ct. 2290, 2300 (1977).

The right to a judicially mandated release accrued to Ned Forman as a result of the Nevada Supreme Court's decision in *Hass*. His release was lawfully ordered. The Court's reconsideration of *Hass*, its determination that *Hass* was incorrectly decided, cannot erase the effect of

the *Hass* decision, one of which was the granting of a writ of habeas corpus to Ned Forman. By holding otherwise, the courts below denied Forman the due process of law guaranteed to him by the Fifth and Fourteenth Amendments.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Ninth Circuit.

Respectfully submitted,

BURTON MARKS of

BURTON MARKS, A Professional Corporation

*Attorney for Petitioner,
Ned George Forman*

APPENDIX

APPENDIX

OPINION OF THE COURT BELOW

In the United States Court of Appeals for the Ninth Circuit.

NED GEORGE FORMAN, Petitioner-Appellant, vs.
CHARLES L. WOLFF, JR., et al., Respondent-Appellee.
No. 77-4030

[FILED November 20, 1978]

Appeal from the United States District Court
for the District of Nevada.

Before: DUNIWAY and CHOY, Circuit Judges, and
RENFREW*, District Judge

PER CURIAM:

Ned George Forman appeals from the federal district court's denial of habeas relief. We affirm.

I. Statement of the Case

On April 29, 1974, Forman pleaded guilty in Nevada state court to an information charging illegal sale of cocaine and received a sentence of fifteen years in Nevada state prison. Two years later the Nevada Supreme Court held that the statute under which Forman had been prosecuted required the prosecution to allege and prove the defendant's age as an essential element of the crime. *Hass v. State*, 92 Nev. 256, 548 P.2d 1367 (1976).

*The Honorable Charles B. Renfrew, United States District Judge for the Northern District of California, sitting by designation.

Forman then filed a petition for habeas corpus in Nevada state district court, claiming that the state had failed to allege his age in its information. The state court ordered Forman's unconditional release. The state of Nevada appealed to the Nevada Supreme Court. Noting that it overruled *Hass* that very day in *State v. Wright*, 92 Nev. 734, 558 P.2d 1139 (1976), the Nevada Supreme Court reversed the granting of habeas relief. *Warden v. Forman*, 92 Nev. 739, 558 P.2d 1141 (1976). The state district court ordered Forman remanded to custody.

Forman then filed a petition for habeas corpus under 28 U.S.C. § 2254 in federal district court, claiming that his remand into custody violated the ex post facto and double jeopardy provisions of the United States Constitution. From the district court's denial of those claims Forman appeals.

II. Ex Post Facto Clause

The ex post facto clause limits the powers of the legislature and does not of its own force apply to the judicial branch. *Marks v. United States*, 430 U.S. 188, 191 (1977). Nonetheless, the courts have recognized that the principle of fair warning underlying the ex post facto clause limits the retroactive application of judicial decisions. *Marks*, 430 U.S. at 191; *Bouie v. Columbia*, 378 U.S. 347, 350-51 (1964). In *Bouie*, for example, the Supreme Court found that defendants had been denied due process when convicted under an unforeseeable interpretation of a state trespass statute which deprived them of "the fair warning to which the Constitution entitles" them. *Id.* at 354.

Forman, by contrast, has not been punished under an unforeseeable construction which prevents fair warning. In *Wright* the Nevada Supreme Court simply reinstated the law as it had been at the time Forman was arrested. Thus, at the time he performed the illegal act, Forman had adequate warning of the prohibited conduct as defined both at that time and after *Wright*. Indeed, at the time he did the illegal deed, the only construction of which Forman was not put on notice was that enunciated in the short-lived *Hass* decision.

III. Double Jeopardy

Our decision in *United States v. Rojas*, 554 F.2d 938 (9th Cir. 1977), belies appellant's double jeopardy contention. A jury had found Rojas guilty of the crime charged.¹ The court thereafter set aside the jury's verdict. We held that the Government could appeal the court's acquittal, noting:

[I]t is the possibility of a second trial, with its attendant "embarrassment, expense and ordeal" which the [double jeopardy] clause was designed to prevent. [Citations omitted.] This potential danger of a second trial is not present, however, in a situation such as this where the district court grants a post-trial motion for judgment of acquittal . . . and thereby sets aside the jury's verdict

¹In *Rojas* we noted that "[t]here of course is no question that jeopardy had 'attached' in this case at the time the jury was impaneled and sworn." 554 F.2d at 941 n. 3. We assume *arguendo* that jeopardy had attached when Forman entered his guilty plea. If it did not, Forman's double jeopardy interests would of course not be implicated. Compare *Bell v. Wainright*, 476 F.2d 964, 965 (5th Cir.), cert. denied 414 U.S. 1000 (1973) with *United States v. Jerry*, 487 F.2d 600, 606 (3rd Cir. 1973).

Appendix

4.

of guilty. In this situation, a successful government appeal will not result in the defendant's required subjection to a second trial, but rather will merely cause reinstatement of the jury's guilty verdict. Since no further fact-finding proceedings will be necessary upon reversal and remand, the defendant's double jeopardy interests are not implicated by the appeal.

Id. at 941 (footnotes omitted). Finding that the district judge had erred in granting the dismissal, we remanded to the district court to reinstate the jury's verdict. *Id.* at 944.

Here too there was a resolution of guilt followed by a determination that under applicable law defendant was not guilty. In both cases this latter determination was later reversed by a higher court. Thus *Rojas* compels the conclusion that the Nevada Supreme Court's reversal of the grant of habeas relief did not violate the double jeopardy protection of the United States Constitution.

AFFIRMED.

State of California)
) ss.
County of Orange)

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and employed in the County of Orange, State of California, over the age of eighteen years and not a party to the within action or proceeding; that

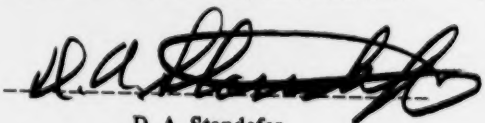
My business address is 326½ Main Street, Huntington Beach, California 92648, that on APRIL 6, 1979, I served the within PETITION FOR WRIT OF CERTIORARI (FORMAN vs. WOLFF) on the following named parties by depositing the designated copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office in the City of Huntington Beach, California, addressed to said parties at the addresses as follows:

Robert List, Attorney General
State of Nevada
Capitol Complex
Carson City, Nevada 89701
(2 copies)

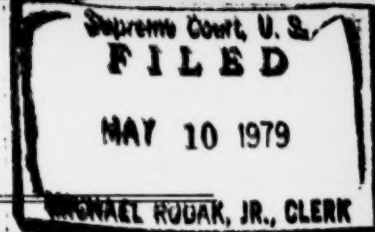
Larry R. Hicks, District Attorney
Washoe County
Washoe County Courthouse
Reno, Nevada 89509
(2 copies)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on APRIL 6, 1979, at HUNTINGTON BEACH, CALIFORNIA.


D. A. Standefer

Dean-Standefer, 326½ Main St., Huntington Beach, Ca. 92648
(714) 536-7161



IN THE SUPREME COURT OF THE

UNITED STATES
October Term, 1978

No.

78-1537

NED GEORGE FORMAN,

Petitioner,

v.

CHARLES L. WOLFF, JR., et al.,

Respondents.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

RICHARD H. BRYAN
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IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1978

No.

NED GEORGE FORMAN,

Petitioner,

v.

CHARLES L. WOLFF, JR., et al.,

Respondents.

Response to Petition for Writ of Certiorari

JURISDICTION

Respondents do not contest Petitioner's reliance on 28 U.S.C. §1254(1) as a jurisdictional basis for this proceeding.

STATEMENT OF THE CASE

On April 29, 1974, Petitioner entered a plea of guilty in state court to a charge of sale of cocaine. He was thereafter sentenced to a term of fifteen years in the Nevada State Prison.

Some two years after Petitioner's plea of guilty, the Nevada Supreme Court handed down its decision in **Hass v. State**, 92 Nev. 256, 548 P.2d 1367 (1976). In **Hass**, the Court considered the aggravated predicament of an adult individual who had been sentenced to life in prison for selling viable marijuana seeds to a person under twenty-one years of age. Had the defendant-seller been under twenty-one years of age, he would have faced a possible penalty of imprisonment for not less than one nor more than twenty years, with possibility of probation. He was instead given a life sentence as he, being over the age of twenty-one years, sold a controlled substance to a person under the age of twenty-one years. (See NRS 453.321—Appendix.) Noting that the defendant's age was determinative of the applicable sentencing provisions, the Nevada Supreme Court concluded that age should thereafter be viewed as an essential element of the crime of sale of a controlled substance. The **Hass** opinion, however, gave no indication as to retroactive application, application in the context of a guilty plea, or whether, within both retroactive and prospective contexts, the principle announced therein would extend to cases in which the State had not secured or would not seek an enhanced penalty.

Petitioner placed principal reliance on **Hass** in a subsequent and initially successful bid for post-conviction habeas corpus relief in the Nevada courts. Despite the fact that Forman had entered a plea of guilty and had not been sentenced in accordance with the enhanced penalty provisions of the Nevada sale statute, a state district judge granted habeas corpus relief.

The State filed an appeal in accordance with the terms of NRS 34.380(7). (See Appendix.) During the pendency of the State's appeal, the Nevada Supreme Court announced its decision in **State v. Wright**, 92 Nev. 734, 559 P.2d 1139 (1976). The Nevada Supreme Court there reconsidered its prior holding in **Hass**, concluded that **Hass** was "improvidently decided", and held that the prosecution would not thereafter be required to plead and prove the age of a defendant in a sale case.

The Court announced its decision in **Wright** on December 30, 1976. That same day, the Court summarily reversed district court orders granting habeas relief to six other prisoners who had used the short-lived **Hass** decision to secure collateral relief. The Petitioner's case was listed among the aforementioned summary reversals. See **Warden v. Forman**, 92 Nev. 739, 558 P.2d 1141 (1976) and other similar cases collected at 92 Nev. 737-741 and 558 P.2d at 1141-1142. The full text of the per curiam decision handed down in Petitioner's case read as follows:

On the authority of, and for the same reasons stated in, **State v. Wright**, 92 Nev. 734, 558 P.2d 1139 (1976), we, *sua sponte*, reverse the district court's order which granted respondent's petition for a writ of habeas corpus. (92 Nev. at 739-740.)

The Petitioner next sought relief in the federal courts alleging, inter alia, that the Nevada Supreme Court's reliance on **Wright** in deciding the State's appeal of his habeas action was violative of the ex post facto provisions of the Federal Constitution. Petitioner was denied relief in both the district and circuit courts. This action follows.

REASONS FOR DECLINING REVIEW

The ex post facto language of Article I §9 of the Constitution limits legislative power and does not of its own force govern judicial pronouncements. **Marks v. United States**, 430 U.S. 188, 97 S.Ct. 990, 992 (1977). This Court, however, has seen fit on rare occasion to extend an ex post facto analysis to judicial pronouncements. **Marks v. United States**, supra; **Bouie v. City of Columbia**, 378 U.S. 347 (1964); **James v. United States**, 366 U.S. 213 (1961). In each instance, this Court set aside an existing conviction where an appellate court's unforeseeable expansion of substantive criminal law left the accused subject to liability for conduct not defined as criminal at the time of commission of the act or acts resulting in prosecution.

The panel decision at issue here made note of the limitations inherent in this Court's prior decisions and concluded that the "fair warning" analysis underlying the **Marks-Bouie-James** trilogy had no application here as the Petitioner, at the time of commission of the crime charged, had adequate notice of the standard by which his conduct would be and was in fact measured and punished.

Petitioner now asks this Court to reject the panel's analysis, suggesting that the Nevada Supreme Court's terse disposition of his appeal included application of a rule not in effect at the time he secured habeas corpus relief in the state district court.

Any determination as to the existence of a denial of due process, regardless of the origin of the claim, presupposes proof of prejudice, or at the very least, circumstances supporting a presumption of prejudice. The Petitioner cannot prove prejudice here; nor can he marshal facts pointing to potential for prejudice.

Following Forman's plea of guilty, the Nevada Supreme Court addressed an aggravated fact pattern that prompted a decision later deemed improvident. During the hiatus between **Hass** and **Wright**, the Petitioner managed to convince a state district court judge that the principle espoused in **Hass** should be extended to his case. As noted earlier, the Nevada Supreme Court had given no indication that **Hass** would be applied retroactively, particularly in the context of a guilty plea that had not resulted in the imposition of an enhanced penalty. The fact that the Nevada Supreme Court would not have extended **Hass** to the Petitioner's case is best evidenced by the Court's later unqualified reversal of **Hass**.

It is apparent that the Petitioner's argument focuses on the methodology employed by the Nevada Supreme Court in treating his case. Had that Court acknowledged its reversal of **Hass** and then gone on to note that **Hass** would not have been extended to Petitioner's case in any event, Petitioner would have no basis for even suggesting an ex post facto violation.¹

The fact that the Nevada Supreme Court did not employ what may in retrospect appear to be better appellate methodology does not require federal habeas intervention. Intervention on the basis of such a transparent claim would result in this Court abandoning its historically restrained practice of assessing true constitutional prejudice in favor of forcing a state appellate court to engage in an academic exercise having no practical constitutional significance.

1. As noted earlier, the unqualified reversal of **Hass** is proof positive that the Nevada Supreme Court would not have extended **Hass** to the fact pattern involved in Petitioner's case.

Were this Court to accept Petitioner's narrow technical argument, it could not seriously be suggested that the Nevada Supreme Court would thereafter be barred from recalling its opinion in Petitioner's case and reconsidering the question of whether the **Hass** decision, assuming its continued vitality, would have been applied to guilty pleas not resulting in the imposition of an enhanced penalty. Cf. **Hankerson v. North Carolina**, 432 U.S. 233, 97 S.Ct. 2339 (1977), concurring opinion of Mr. Justice Blackmun, 97 S.Ct. at 2346. In the event of such a remand, the outcome would be inevitable. As the Nevada Supreme Court has already expressly overruled **Hass**, there is little if any likelihood that the Court would accept Petitioner's claim that the state district court judge properly extended **Hass** behind its unique facts to a prior plea of guilty that did not result in imposition of an enhanced penalty. In short, Petitioner asks this Court to exercise its jurisdiction in support of what must be characterized in the final analysis as semantic exercise.

CONCLUSION

Petitioner's demand for relief rests on a tightly woven constitutional argument that suffers from one principal defect. The Petitioner can show no prejudice; nor can he demonstrate how this Court's intervention would be of any practical consequence given the particular facts of this case. Accordingly, Respondents respectfully request that the petition be denied.

Respectfully submitted,

RICHARD H. BRYAN
Attorney General, State of Nevada

CALVIN R. X. DUNLAP
Washoe County District Attorney

JOHN L. CONNER
Deputy District Attorney

Attorneys for Respondent

APPENDIX

STATE STATUTORY PROVISIONS INVOLVED

Nevada Revised Statutes:

453.321: Offenses and penalties: Prohibited

Acts; Penalties.

"1. Except as authorized by the provisions of NRS 453.011 to 453.551, inclusive, it is unlawful for any person to sell, exchange, barter, supply or give away a controlled or counterfeit substance.

"2. Any person 21 years of age or older who sells, exchanges, barter, supplies or give away a controlled or counterfeit substance in violation of subsection 1 classified in:

"(a) Schedule I or II, to a person who is:

"(1) Twenty-one years of age or older shall be punished by imprisonment in the state prison for not less than 1 year nor more than 20 years and may be further punished by a fine of not more than \$5,000

"(2) Under 21 years of age shall be punished by imprisonment in the state prison for life with possibility of parole and may be further punished by a fine of not more than \$5,000

"3. Any person who is under 21 years of age and is convicted:

"(a) Of an offense otherwise punishable under subsection 2 shall be punished by imprisonment in the state prison for not less than 1 year nor more than 20 years, with possibility of probation"

34.380: Writ granted by supreme court or district courts; appeal on denial or granting of the writ.

...
 "7. The State of Nevada is an interested party in habeas corpus proceedings, and, in the event the district judge or district court to whom or to which an application for a writ of habeas corpus has been made shall grant such writ, then the district attorney of the county in which the application for the writ was made, or the city attorney of a city which is situated in the county in which the application for the writ was made, or the attorney general in behalf of the state, may appeal to the supreme court from the order of the district judge granting the writ and discharging the applicant; but such appeal shall be taken within 15 days from the day of entry of the order.
"